

**ST 03-7**

**Tax Type: Sale Tax**

**Issue: Exemption From Tax (Charitable or Other Exempt Types)**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS,**

**Docket No: 02 ST 0000**

**Sales Tax Exemption**

**v.**

**ABC INFORMATION CENTER,  
  
APPLICANT**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Ms. Jane Doe, Chairperson of the Board, on behalf of ABC Information Center; Mr. Shepard Smith, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:** On March 18, 2001, ABC Information Center (hereinafter “ABC” or “applicant”) wrote to the Illinois Department of Revenue (hereinafter the “Department”) to request that the Department issue it an exemption identification number so that it could purchase tangible personal property at retail free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On May 18, 2001, the Department denied ABC’s application. ABC then requested a review of the denial and on July 30, 2002, the Department again concluded that ABC did not meet the requirements of a tax-exempt

organization. ABC protested the Department's decision and requested a hearing, which was held on April 15, 2003, with testimony from Jane Doe, Chairperson of the Board, Jenny Doe, Executive Director, and Josie Doe, former Director, testifying.

The sole issue to be determined at the hearing was whether ABC qualified for an exemption identification number as "a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes." 35 ILCS 105/3-5(4). Following a careful review of the evidence and testimony presented at the hearing, I recommend that the Department's denial be affirmed.

**FINDINGS OF FACT:**

- 1.The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's denial of exemption dated May 18, 2001, and denial after a second review dated July 30, 2002. Tr. pp. 7-8; Dept. Ex. No. 1.
- 2.ABC was incorporated on December 29, 2000, with the stated purpose of "serving in partnership with local businesses, community-based organizations, government agencies and institutions [and serving] as an information center for residents, local businesses and visitors in order to promote economic and human development in ABC and Community." Tr. p. 9; Applicant's Ex. No. 1.
- 3.ABC's Bylaws state that membership "is open to all residents, businesses and institutions of the ABC communities." Tr. pp. 9, 19-20; Applicant's Ex. No. 2.

- 4.ABC's "Illinois Charitable Organization Annual Report" for year 2001 shows total revenue of \$48,581, of which 91% was from "government grants and membership dues" comprised of \$5,000 contributed from the Chicago Department of Cultural Affairs, and \$39,414 contributed from the City of Chicago. Total expenses were \$45,124, of which salaries were \$37,420. The highest paid employee during the year was the executive director earning a salary of \$27,000. Tr. pp. 10-11; Applicant's Ex. Nos. 3 and 4.
- 5.ABC publishes a "Resource Guide" for the community which identifies organizations and contacts for those individuals and businesses needing assistance with, *inter alia*, childcare, disabilities, domestic violence, employment and job training, business development, immigration, and health. Tr. p. 11; Applicant's Ex. No. 5.
- 6.ABC is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. p. 12; Applicant's Ex. No. 7.
- 7.ABC sponsors an "Information Fair" in which "community organizations, social agencies and government agencies that offer a wide variety of services for families, youth, the elderly, and entrepreneurs" participate. The Information Fair is free for the community. Tr. pp. 11-12; Applicant's Ex. No. 6.
- 8.On November 1<sup>st</sup> and 2<sup>nd</sup>, Mexicans celebrate All Saints Day and All Souls Day, known as "Day of the Dead." The Mexican Fine Arts Center sponsors a Day of the Dead exhibit from September 28 through December 9. Approximately 50,000 visitors attend, including 450 school and tour groups. ABC, along with other community organizations, publishes a

brochure of neighborhood restaurants, shopping, and coupons for the ABC area to keep the exhibit attendees in the community after visiting the exhibit. Visitors to the exhibit are given the brochure. Tr. pp. 12-13; Applicant's Ex. No. 8.

9. From March 8, 2002 to March 7, 2003, ABC accomplished the following objectives: 1) distributed a monthly newsletter to 58 community organizations and businesses containing information for the community; 2) sponsored public information meetings to increase community awareness about services and programs; 3) identified needs and resources in the community; 4) maintained a website of community based organizations, social service agencies and government programs and activities for increased community awareness; 5) created and distributed Resource Guides; 6) coordinated a public information fair; 6) provided technical assistance to social service agencies, businesses and visitors. Tr. pp. 13, 23-27; Applicant's Ex. Nos. 9, 11, and 12.

10. ABC, together with the Chamber of Commerce publishes a brochure showing trolley stops for the "ABC Free Trolley System" The brochure contains advertisements and coupons for neighborhood businesses. Thousands of people used the trolley system and many riders used the coupons. Tr. pp. 15, 17-18, 21-23; Applicant's Ex. No. 13.

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that ABC has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant

an exemption from sales tax. Accordingly, under the reasoning given below, the determination by the Department denying ABC a sales tax exemption number should be affirmed. In support thereof, I make the following conclusions.

It is well established that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemptions “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989). The applicant bears the burden of proving “by clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist.1991).

ABC seeks to qualify for an exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable...purposes[.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). An “exclusively” charitable purpose need not be interpreted literally as the entity’s sole purpose; it should be interpreted to mean the primary purpose, and not a merely incidental or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). Incidental acts of beneficence are legally insufficient to establish that the applicant is “exclusively” or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

In determining whether an organization is charitable in its purpose, it is proper to consider provisions of its charter. Rotary International v. Paschen, 14 Ill. 2d 387 (1987). ABC’s Articles of Incorporation state that the organization serves “in partnership with local businesses, community based organizations, government agencies and institutions” as an “information center for residents, local businesses and visitors in order to promote economic and human development” in the area. Applicant’s Ex. No. 1. Article 2 of

ABC's Bylaws is in agreement with the Articles of Incorporation and states that ABC "will serve as an information center for local businesses, residents and visitors in order to promote economic and human development in ABC and Community." Article 4 of the Bylaws state that ABC is operated exclusively for "charitable and educational purposes." Applicant's Ex. No. 2.

It is impossible to conclude from these provisions that ABC is operated "exclusively" for charitable purposes, as is required for a sales tax exemption. Serving in partnership with business, serving as an information center for businesses and visitors, promoting economic development in the area, and operating for "educational" purposes are not endeavors recognized by Illinois courts as "charitable." ABC's purpose appears to be to further the business interests of the ABC neighborhood, and in this regard, it is comparable to a chamber of commerce. Illinois Department of Revenue Regulations concerned with the sales tax exemption for "chambers of commerce" and "business associations" state that these organizations, "as to which an important purpose is to protect and advance the interests of their members in the business world, are not organized and operated exclusively for charitable or educational purposes, even though such organizations may engage in some charitable and educational work." 86 Ill. Adm. Code § 130.2005(f).

Based on the testimony at the hearing, I conclude that ABC's main purpose is to "advance the interests" of businesses in the community. There was considerable testimony at the hearing about the free trolley and the brochure containing neighborhood advertisements and coupons published by ABC for trolley riders. There was positive feedback from the area businesses with regard to coupon use. "And we also because of that we have a lot more businesses knocking on our door saying that they want to

participate in the trolley system for this year.” Tr. p. 21. Similarly, there was substantial testimony about ABC’s efforts to keep visitors in the neighborhood after they visit the “Day of the Dead” exhibit. ABC distributes a brochure of advertisements including neighborhood restaurants, shopping and coupons to visitors to the exhibit. “Visitors to the [exhibit], who ask where they can eat, are given a list of restaurants in ABC and Community that they may try.” Applicant’s Ex. No. 8. These activities may assist in the economic development of the ABC community but there is nothing inherently charitable about increased sales for neighborhood businesses. The testimony with regard to these activities does not lead to the conclusion that ABC is operated “exclusively” for charitable purposes.

Article 4 of ABC’s Bylaws state that ABC is operated exclusively for “charitable and educational purposes.” There was no testimony at the evidentiary hearing as to how much time, or the amount of resources that ABC dedicated exclusively to charitable and educational activities, if any. I presume that ABC considers the publication and distribution of the “Resource Guide,” and their sponsoring of an “Information Fair” as charitable and educational activities. In the Resource Guide, one of the chapters is entitled “Business Development.” In this chapter, readers, presumably businesses, are directed to, *inter alia*, “Bank,” where business loans from \$500-\$35,000 are available with easy eligibility requirements, and to “The Resurrection Project” which “provides entrepreneurial assistance to new, emerging construction related businesses.” The flyer for the Information Fair states that attendees can learn about services that can help businesses and that representatives from agencies that offer services for entrepreneurs will be present. Applicant’s Ex. No. 6. As discussed previously, advancing the interests

of business in the community does not in itself qualify an organization for sales tax exemption status.

Some of the chapters in the Resource Guide, such as those on “Childcare” and “Domestic Violence,” list agencies that ABC residents, not businesses, might find useful. Similarly, ABC’s Information Fair includes community organizations, social agencies and government agencies “that offer a wide variety of services for families, youth [and] the elderly...” Applicant’s Ex. No. 6. “The information again that we disperse is information that we are given from other entities. We refer them to other entities within the community that can better assist them.” Tr. p. 42. There was no testimony as to how many of the referrals were for businesses or individuals.

My research indicates no Illinois case where an organization that refers people to charitable organizations was itself considered a charity. Although the referral service is obviously helpful to the community, it is the organization which the residents are referred to that is providing the charitable service. If there are any charitable effects from the referrals, they are incidental and secondary and do not lead to the conclusion that ABC is organized “exclusively” for charitable purposes.

For the above stated reasons, I recommend that the Department’s determination denying the applicant a sales tax identification number be affirmed

Kenneth J. Galvin  
Administrative Law Judge

May 19, 2003